

**STATE OF NEW MEXICO  
BEFORE THE SECRETARY OF THE ENVIRONMENT**

**IN THE MATTER OF HEARING DETERMINATION  
REQUEST FOR THE WASTE ISOLATION PILOT  
PLANT (WIPP) DISCHARGE PERMIT RENEWAL  
AND MODIFICATION APPLICATION FOR DP-831**

**No. GWQB 21-19(P)**

---

**NEW MEXICO ENVIRONMENT DEPARTMENT GROUND WATER QUALITY  
BUREAU'S COMMENTS ON HEARING OFFICER'S REPORT AND  
RECOMMENDED DECISION**

---

Pursuant to 20.1.4.500(C)(2) NMAC, the Ground Water Quality Bureau ("Bureau") of the Water Protection Division ("Division") of the New Mexico Environment Department ("Department") hereby submits the following written Comments on the *Hearing Officer's Report and Recommended Decision* issued on November 19, 2021.

**COMMENTS**

1. The Bureau respectfully requests the last sentence of the top paragraph on page 6 be amended to include the full citation to the *Rhino* case. The Bureau recommends the sentence be amended as follows (deleted material shown in strike-out; amended material shown underlined):

On the other hand, it was decided that quality-of-life evidence was relevant to the Draft Permit under ~~*Rhino*~~ *In re Rhino Env'tl. Servs.*, 2005-NMSC-024; 138 N.M. 133; 117 P.3d 939.

2. The Bureau respectfully requests that paragraph #9 on page 42 be amended to correctly reference the Water Quality Act with the acronym WQA, as defined in the Introduction

on page 1 of the Hearing Officer's Report and Recommended Decision. The Bureau recommends paragraph #9 be amended as follows (deleted material shown in strike-out; amended material shown underlined):

9. In addition to meeting the regulatory requirements for availability of public documents, there is no precedent for the requirement of an information repository under the ~~GWQA~~ WQA or associated regulations. Although, the use of information repositories under The Resource Conservation and Recovery Act ("RCRA") has a regulatory basis that does not exist in the ~~GWQA~~ WQA or associated regulations. For example, an information repository, required by the hazardous waste regulations, is identified in WIPP Hazardous Waste Facility Permit Part 1, Section 1.14: "[t]he DOE shall establish and maintain an electronic Information Repository (IR) in accordance with the requirements of 20.4.1.1102 NMAC (incorporating 40 Code of Federal Regulations (CFR) §§ 124.33(c) through (f)) and 20.4.1.900 NMAC (incorporating 40 CFR § 270.30(m))." Under RCRA, the determination to require an IR is a fact-specific inquiry that requires the consideration of several factors. There is no analogous regulation or criteria from which to determine the scale and scope of such a repository for a groundwater discharge permit.

3. The Bureau respectfully requests that paragraph #19 on page 45 be amended to remove the alleged exemption from a discharge permit. The Bureau recommends paragraph #19 be amended as follows (deleted material shown in strike-out; amended material shown underlined):

19. ~~Any discharges from Salt Cell 5 and Salt Storage Pond 5 would consist of leachate which results from the direct natural infiltration of precipitation through disturbed materials and are exempt from the discharge permit requirement under Subsection H of 20.6.2.3105 NMAC [FoFs #91-94; DOE Exhibit 2, p.6, lines 14-21; DOE Exhibit 3, p.8, lines 4-9]. Alternatively, and without limiting the foregoing, the~~ The proposed modification relating to Salt Cell 5 and Salt Storage Pond 5 meet the requirements of Subsection C of 20.6.2.3109 NMAC, which provides that the secretary shall approve the proposed discharge plan, modification, or renewal if those requirements are met [DOE Exhibit 2, pages 7-8; DOE Exhibit 3, pages 9-10].

4. The Bureau respectfully requests that paragraph #20 on page 46 be amended to clarify the Permit's qualification as a protective document. The Bureau recommends paragraph #20 be amended as follows (deleted material shown in strike-out; amended material shown underlined):

20. Approval of the draft Discharge Permit will ~~maintain protection~~ allow the Permit to remain protective of ground water, human health, and the environment [DOE Exhibit 1; DOE Exhibit 2; DOE Exhibit 3].

/s/ Chris Vigil  
/s/ Christal Weatherly  
Assistant General Counsel  
New Mexico Environment Department  
121 Tijeras Ave. NE, Ste. 1000  
Albuquerque, NM 87102  
Phone: (505) 383-2060  
Fax: (505) 383-2064  
Email: christopherj.vigil@state.nm.us  
christal.weatherly@state.nm.us

### **CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing *Comments on Hearing Officer's Report and Recommended Decision* was served by electronic mail on the following on December 2, 2021:

Myles Hall  
Tom Angel  
U.S. Department of Energy  
myles.hall@cbfo.doe.gov  
James.Angel@emcbc.doe.gov

Joni Arends  
Concerned Citizens for Nuclear Safety  
jarends@nuclearactive.org

Janet Greenwald  
Citizens for Alternatives to Radioactive  
Dumping  
contactus@cardnm.org

Deborah Reade  
reade@nets.com

Don Hancock  
Southwest Research and Information Center  
sricdon@earthlink.net

Scott Kovac  
Nuclear Watch New Mexico  
scott@nukewatch.org

Dave McCoy  
Citizen Action New Mexico  
dave@radfreenm.org

Madai Corral  
Office of Public Facilitation  
New Mexico Environment Department  
1190 St. Francis Drive, Santa Fe, New  
Mexico 87505  
505-490-5803  
Madai.corral@state.nm.us

/s/Chris Vigil  
Assistant General Counsel  
New Mexico Environment Department